

Remarks/Arguments
Status of the Application

Claims 1-5, 8 and 17-18 are pending. Any amendments made herein have been made without prejudice to Applicants' right to prosecute any cancelled subject matter in a timely filed continuation application. No new matter has been added.

Priority Claim

The Office asserts the "claimed priority is not valid" because the "instant application is filed more than 30 months from the filing date of the foreign priority document and more than 18 months from the filing date of the PCT priority document." See, Non final Office Action mailed July 3, 2008 (hereinafter "Office Action") at page 2

Applicants, however, respectfully assert the priority claim is valid because the national stage application at hand is entitled to the January 5, 2005 filing date of the international stage application. Applicants direct the Office's attention to the Notice of Acceptance Of Application Under 35 U.S.C. 371 and 37 CFR 1.495 submitted herewith as Appendix A. More specifically, Applicants call to the Office's attention the language in the red box that indicates the filing date of the national stage application is the filing date of the International Application. Applicants also direct the Office's attention to MPEP section 1893.03(b), which explains:

An international application designating the U.S. has two stages (international and national) with the filing date being the same in both stages. Often the date of entry into the national stage is confused with the filing date. It should be borne in mind that the *filing date of the international stage application is also the filing date for the national stage application.*

(emphasis added). The Office's assertion that the present priority claim is invalid appears based on the December 8, 2006 371(c) date, which is the date all of the 35 U.S.C. 371 requirements were met—which, as indicated above, is not the actual filing date. MPEP section 1893.03(b) further explains:

The "Application Filing Date" field formerly displayed in PAIR was changed to "Filing or 371(c) Date" to clearly indicate that for international applications that enter the national stage under 35 U.S.C. 371, the information displayed in this field is the date of receipt of the 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) requirements. Applicants are quite often confused as to the true filing date and will ask for corrected filing receipts thinking that the information thereon is wrong. This explanation should offer some clarity. For most legal purposes, *the filing date is the PCT international filing date.*

(emphasis added).

Moreover, Applicants are only required in accordance with 37 CFR 1.495(b) to provide a copy of the international application and the basic national fee before expiry of 30 months from the priority date to enter the national stage. In the situation at hand, a copy of the international application was provide and the fee paid on June 27, 2006, which is well before the expiry of 30 months from the priority date and within 18 months of the date on which the PCT application was filed. Furthermore, as the application at hand is entitled to the filing date of the International Application, the present application is entitled to a January 5, 2005 filing date, which is within 12 months of the January 9, 2004 date on which the priority application was filed.

In view of the foregoing, Applicants respectfully assert the application at hand is entitled to the priority filing date of January 9, 2004. Accordingly, Applicants respectfully request the Office acknowledge the validity of the priority claim to the January 9, 2004 priority application filing date.

Rejections Under 35 U.S.C. § 103(a)

Claims 1-5, 8, and 17-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 2004/041802 in view of Wei, et al. See, Non-final Office Action mailed July 3, 2008 (hereinafter "Office Action") at page 2.

This rejection, however, must be withdrawn because WO 2004/041802 does not qualify under 103(a) as prior art. Indeed, WO 2004/041802 published on May 21, 2004, which is more than 5 months after the January 9, 2004 date on which Applicants' priority application was filed. Applicants point out that U.S. patent No. 7,253,173, which issued August 7, 2007, is the U.S. counterpart of WO 2004/041802. Applicants further point out U.S. Patent application no. 11/774,935, which was filed July 9, 2007, is also a U.S. counterpart of WO 2004/041802.

In view of the foregoing, Applicants respectfully request the Office to withdraw this rejection.

IDS filed October 18, 2006

Applicants thank the Office for considering the references cited on the Information Disclosure Statement Letter filed October 18, 2006. Applicants, however, note the Office did not indicate the references cited on the SB08 forms filed October 18, 2006 along with the aforementioned IDS Letter were considered. Accordingly, Applicants respectfully request the Office initial the outstanding SB08 forms and notify Applicants of same via next Office Action.

Conclusion

In view of the foregoing amendments and/or remarks, Applicants respectfully assert the claims are in condition for allowance, and therefore respectfully solicit a Notice of Allowance. In

order to expedite disposition of this case, the Office is invited to contact Applicants' representative at the telephone number below to resolve any remaining issues.

Although Applicants believe no fees are due, the Commissioner is hereby authorized to charge any deficiency in the fees or credit any overpayment(s) to deposit account No. 26-0166, referencing Attorney Docket No. 101259-1P US.

Respectfully submitted,

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